IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.6637 OF 2006

Shri Nitin B Shah, .. Petitioner

Vs

Shri Mahadev Vishwanath Kulkarni
since deceased through his heirs
and L.Rs
1(a) Smt Vaishali Mahadev Kulkarni
and ors. .. Respondents.

Mr Pankaj Das i/b Mr R & D Legal, for the petitioner.

CORAM : D.B.BHOSALE,J.
DATE : 09.10.2006
PC:

1. Heard the learned counsel for the petitioner.

2. By this writ petition, the petitioner has challenged the two orders, both dated 24.1.2006. By order dated 24.1.2006 passed on the application for condonation of delay dated 9.6.2004, the Court below has condoned the delay subject to payment of cost of Rs.1500/-. I perused the impugned order and the other material placed before me. Considering the overall facts and circumstances of the case, to my mind, the court below has rightly exercised the discretion and condoned the delay for the reasons stated in the order. I find no reason to interfere with the discretionary order passed by the court below which. Moreover, it does not suffer from any infirmity

warranting interference by this court

under Article 227 of the Constitution of India. Insofar as the order at Exhibit 41 is concerned, the petitioner has challenged only paragraph (2) of the operative part thereof by which the petitioner-decree holder is directed not to withdraw the amount that was to be deposited by the judgment debtor. Since the application for setting aside the exparte decree is pending I do not wish to interfere with the said order. Mr Das, learned counsel for the petitioner, submits that the petitioner is prepared to furnish bank guarantee for seeking withdrawal of the said amount. It would be open for the petitioner to make a similar request seeking withdrawal of the amount deposited by the judgment debtor before the court below after the application for setting aside exparte decree is decided.

2. With these observations, this writ petition is disposed of.

(D.B.BHOSALE,J.)